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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,229	10/07/2005	Wolfgang Dinkelacker	K0004/7006	6706
64967	7590	06/08/2007	EXAMINER	
LAW OFFICES OF PAUL E. KUDIRKA			SINGH, SUNIL K	
40 BROAD STREET			ART UNIT	PAPER NUMBER
SUITE 300			3732	
BOSTON, MA 02109				
MAIL DATE		DELIVERY MODE		
06/08/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/552,229	DINKELACKER, WOLFGANG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sunil K. Singh	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 March 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 and 12-16 is/are rejected.
- 7) Claim(s) 10 and 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

This action is in response to applicant's amendment filed on 03/26/2007.

### *Specification*

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.
2. The disclosure is objected to because of the following informalities: Corrections to the specification does not match the original disclosure.

Appropriate correction is required.

### *Claim Objections*

3. Claim 12 objected to because of the following informalities: In line 8, the term "angle a' " should be amended to --angle α--. Appropriate correction is required. Furthermore, claim 12 is objected to because they include reference characters, "α" and "α' ", which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims.

See MPEP § 608.01(m).

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 16 recites the limitations "the concave part" in Line 2 and "the convex part" in Line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

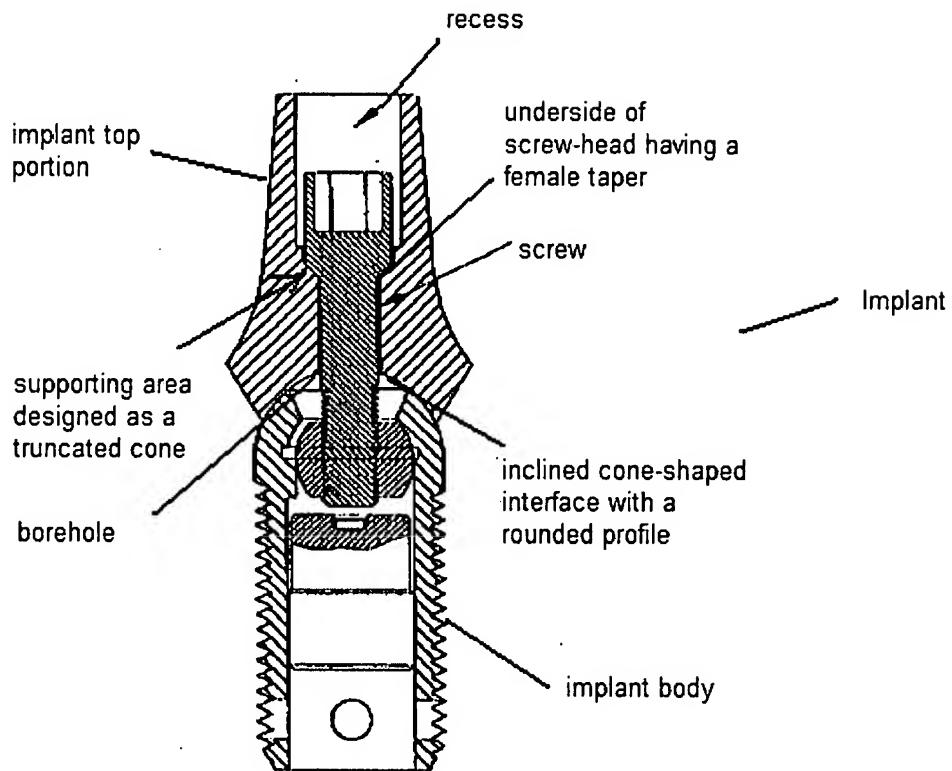
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lustig et al (US 6,287,115).

Lustig et al. discloses an implant having: an implant top portion (See Fig. Below) attached to an implant body (see Fig. Below) by means of screw (see Fig. Below); a borehole that surrounds a through-borehole (825 and 915) for connection screw and a recess (see Fig. Below) with a supporting area designed as a truncated cone (Shown in Figure below)(Fig. 1-17) for the screw head; a screw head having an underside that is designed as a female taper shown in Fig. 15 (reproduced in the Figure below); an implant top that is adapted to the profile of the implant body by means of a screw (Column 2, Lines 58-67). It is inherent that the female taper and the truncated cone are brought into close contact when the connection screw is tightened. Lustig et al. further discloses an implant where the interface between the implant body and the implant top portion has a head that runs at a right angle to the longitudinal axis of the implant body (Figs. 15 and 43c); an interface between the implant body and the implant top that has a

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profile adapted to a comb shape of the jaw (Fig. 43c); a profile that is inclined toward the buccal side and the lingual side (Fig. 43c); and where the profile toward the buccal side and the lingual side is circularly rounded and also has a bell shape (Figs. 1-17, 43b and 43c). Lustig further discloses a jaw implant where the inclined faces of the buccal side and on the lingual side in the interface area of the implant body form an angle, which is larger than the angle between corresponding inclined surfaces on the buccal side and the lingual side in the interface area of the implant top portion; and where the rounded surface on the buccal side and the lingual side have a smaller radii of curvature in the interface area of the implant top portion than the corresponding rounded surfaces on the buccal side and on the lingual side in the interface area of the implant body (Figs. 15-17, 43b and 43c).



*FIG. 15*

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7-9, and 12-14 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Lustig et al. (US 6,287,115) in view of Kirsh (US 4,793,808).

Lustig et al. discloses the invention substantially as claimed except for an implant top that is elastically deformable under pressure of a screw when tightened.

Kirsh teaches an implant where the implant top portion having an interface area that is elastically deformed under the action of a screw and where the elastic deformation exerts a restoring force in order ensure that the fitted connection is not loosened (Column 2, Lines 3-10 and Column 6, Lines 4-5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lustig by having an interface area of the implant top portion that is elastically deformable under pressure of a screw, as taught by Kirsh, in order to ensure that the fitted connection cannot be loosened.

10. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lustig et al. (US 6,287,115) in view of Kirsh (US 4,793,808) and in further view of Balfour et al. (US 2003/0068599).

Lustig et al./Kirsh discloses the invention substantially as claimed except for an implant where the bell shaped profile in the interface area has a circular concave part having a smaller radii of curvature than the corresponding circular convex part.

Balfour et al. teaches a dental implant having a bell shaped interface area (16) with a circular concave part having smaller radii of curvature than the corresponding circular convex part (Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lustig/Kirsh by having an interface area in the bell shape, as taught by Balfour et al., in order to provide an alternate means of attaching the implant bottom portion to the implant top portion.

***Allowable Subject Matter***

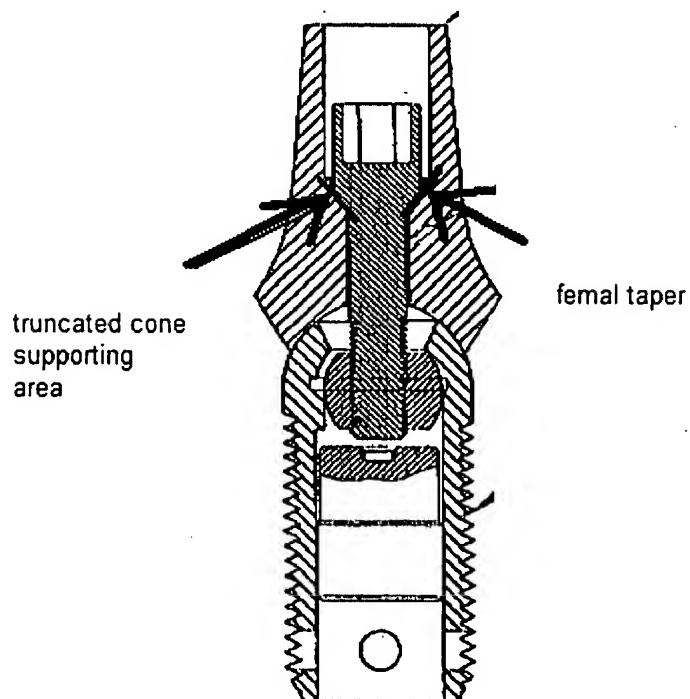
11. Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments filed 03/26/2007 have been fully considered but they are not persuasive. In regards to the abstract, applicant did not submit the properly amended abstract and is therefore objected to until the Office receives the proper amendments to the abstract.

Applicant argues that the undercut of Lustig's screw has a different form and purpose than the female taper of the present invention. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See *Ex parte Masham*, 2 USPQ2d 1647 (1987). Lustig discloses the structural limitations of the jaw implant having a recess forming a supporting area in the shape of a truncated cone; and a connecting screw having a female taper at the underside of the screw head in order to mate with the supporting area. This is clearly shown in Figure 15, which is reproduced below.



The figure illustrated above shows the recess having a supporting area designed as a truncated cone and a connection screw having a corresponding female taper that mates with the supporting area.

Applicant further argues that Lustig does not disclose a profile adapted to the cone shape of a jaw. The examiner disagrees. Since Lustig's implant is used for attachment of the jawbone, it is capable of being adapted to the cross section of the jaw. Applicant admits via claim 5 (which depends on claim 3), that the cone-shaped profile can be rounded towards the buccal and lingual side. Lustig clearly discloses a profile having a rounded cone-shaped cross section in Figures 1-17, 43c, and 46.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sunil K Singh  
Examiner  
Art Unit 3732

SKS  
06/03/2007



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